

OFFICE OF THE DIRECTOR



Office of Security

6 August 1987

OS REGISTRY

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TO: Deputy Director for Administration

SUBJECT: SSCI CI Polygraph Proposal

Bill:

The attached would be a big step toward improving staff security on the Hill. John Nelson has already been in touch with us to discuss the SSCI polygraph proposal.

Attachment

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Mr. WARNER. Mr. President, if no other Senator desires recognition, I yield back the remainder of my time.

The PRESIDING OFFICER. If there is no further debate on the amendment, the question is on agreeing to the amendment.

The amendment (No. 632) was agreed to.

THE NEED FOR POLYGRAPH EXAMINATIONS OF
SENATE INTELLIGENCE COMMITTEE STAFF

Mr. HOLLINGS. Mr. President, today I intended to offer an amendment to require the Senate to do something that professionalism and common sense should have dictated years ago: administer polygraph examinations to the staff of the Senate Intelligence Committee. However, in the interest of moving the pending legislation, I will not. But I do have a few things to say on this subject.

I know some of my colleagues on the Intelligence Committee feel uncomfortable with this proposal. I am told it is impractical and unfair because we operate in a political and media environment. But that is exactly the point. We do operate in such an environment, and therefore, must hold ourselves to an even higher standard of diligence, security, and self-regulation.

What I am proposing today requires nothing more of the Senate than what we already expect of the intelligence community. The CIA, NSA, DIA, and DOD already require polygraph examinations. And such a requirement also should be a condition of employment here on the Senate Intelligence Committee.

Members and staff of our Intelligence Committee have daily access to the most highly classified and important information in our Nation. Oversight requires that we diligently review activities ranging from covert actions to sophisticated satellite reconnaissance. The unauthorized disclosure of such information can literally cost the Nation hundreds of millions of dollars in lost time and technology, threaten the lives of our agents, and disrupt our foreign policy.

Yet the staff with access to such information is not polygraphed as part of their background investigation. On the one hand we expect such a standard in the executive branch. On the other hand, we exempt ourselves.

Of course, Mr. President, this should come as no surprise to anyone. The Congress already exempts itself from many of those uncomfortable procedures that it mandates for everyone else. We are exempt from EEO. We are exempt from OSHA. Indeed, we are even exempt from laws that we make that do apply to us. If we blow the budget, we either ignore the budget resolution or waive it. The Harry Byrd amendment requiring a balanced budget? We have ignored that for years. Gramm-Rudman-Hollings? We cook the books to make reality conform to economic fantasy.

The point is clear. The Congress does not set a sterling example of con-

sistency, self-discipline, and integrity. But it is one thing to be duplicitous with the American people on budgets or OSHA. It is another thing to be duplicitous and lazy with them when it comes to national security.

By taking the simple step of requiring polygraph examinations, we will do more to reestablish our credibility with the American people and the intelligence community than any other single move. We will show them that we take national security seriously. We will show them that we can and will clean our own house. We will show them that we will hold ourselves to the same high standards we expect of others.

Yet despite these apparent benefits, many will still ring their hands about this proposal. So let me now address some of their concerns.

First, there is the issue that it is unfair that staff on the committee, but not Senators, are polygraphed. That is true—it is unfair. But it is also a fact of life for elected officials. Yet I believe my colleagues will join me in voluntarily taking a polygraph. We understand that we must lead by example.

Second, the polygraph is said to be unreliable. However, a wide range of professional organizations and scientists have exhaustively studied this issue. The assessments vary but the weight of evidence shows that in regulated and professional conditions, the polygraph is a valuable investigative tool.

It should also be noted that on the basis of its own carefully regulated and controlled research, the National Security Agency has concluded that the polygraph is 90 to 95 percent effective. While that is not perfect, it is very good. Other experts from the CIA have stated that the polygraph is the single most important tool they have in personnel security.

Additionally, Mr. President, it should be noted that the polygraph is only one part of the overall background investigation. No action will be taken against an employee simply on the basis of the exam. It will be used as a complement to the already extensive background investigation performed prior to employment of staff.

And this leads to another issue—the contention that the polygraph is an unwarranted intrusion on personal privacy. All of us as elected officials can certainly empathize with that. But we also know that such intrusions come with the territory. We know it is a condition of our employment.

But more to the point, such an assertion is baffling, and basically untrue. Employees of the Intelligence Committee already go through an extensive and intrusive background investigation. It covers their last 15 years of employment and residences. It is a nationwide investigation. Hopefully it leaves no stone—no matter how embarrassing—turned. And, it is done at the consent of the employee.

Further, the polygraph I am proposing will cover only counterintelligence and security issues. It will not be the full exam given in the intelligence community. It will not delve into personal areas or lifestyles. In the jargon of the professionals, it only will be a counterintelligence polygraph.

Mr. President, it should be noted that it is unrealistic to expect background investigations by themselves to turn up evidence of espionage. Obviously the personal history of a well-trained agent will be sufficiently sanitized to avoid detection. Background investigations may uncover character flaws or vulnerability to espionage. But they will not, and can not, on their own reveal evidence of intent to commit espionage. And there are cases on the record where only the polygraph did unmask a person seeking employment for the purposes of espionage.

Deterrence is also a benefit. Convicted spies Christopher Boyce and William Bell both have testified that they would not have considered espionage if they had to undergo periodic polygraphs. Edward Howard, Ronald Pelton, and David Barnett all committed their treason after they left the intelligence community and its polygraph system. The Walker family spy ring operated in the Navy where polygraphs were not administered.

Mr. President, some view the polygraph as an insult. But it is no such thing. Access to classified information is a privilege, not a right. Accordingly, it is not unreasonable that the Government have the ability to fully assess all those accorded that privilege. And it is not unreasonable that the Government ask me, or the Secretary of State, or a Senate employee, to reaffirm my allegiance and conduct. I do it now in my oath of office. I welcome the opportunity to do it again as part of my oversight responsibility to the Senate.

A summary of the proposed amendment follows:

SUMMARY OF SENATE INTELLIGENCE
COMMITTEE POLYGRAPH AMENDMENT

I. COVERAGE

All SSCI Staff (present and future) are to be polygraphed.

Current staff are to be polygraphed within 1 year of enactment.

Future staff are to be polygraphed as a condition of employment.

All staff are to be routinely re-examined every five years.

Nothing in this proposal shall limit or diminish existing Committee practice of using investigative polygraphs to investigate unauthorized disclosures.

II. EXAMINATION

Polygraph examination will cover issues only related to counter intelligence and security.

The polygraph examination will not cover areas related to an individual's personal lifestyle.

To the extent possible, a standardized and common set of examination questions related to counterintelligence and security will

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be developed and administered to all examinees.

III. ADMINISTRATION

Within 45 days of enactment, the Chairman and Vice Chairman of the SSCI will consult with the Capitol Police and Senate Office of Security regarding the employment of a competent civilian polygraph examiner. To the extent possible, existing equipment under the jurisdiction of the Capitol Hill Police will be utilized.

All records, transcripts, notes and related materials of all examinations will be the property of the SSCI. Such materials will be under the jurisdiction of the SSCI and will be stored in a secure and confidential manner. Content of such materials shall be accessible only to the Chairman, Vice Chairman, Majority and Minority Staff Directors and Security Director of the SSCI.

All materials related to an examination will be destroyed in a secure manner within 14 days of such examination. Destruction of such records will be conducted by the Security Director under the guidance of the Majority and Minority Staff Directors.

IV. ADJUDICATION

Results of polygraph examinations will be reviewed only by the Chairman, Vice Chairman, Majority and Minority Staff Directors, and Security Director. Based upon their review of examination results and other background investigation information, a determination of the suitability for employment will be made.

The SSCI will not make available any results or information regarding the polygraph examination to any examinee or any other individual and will not disclose any reasons for refusal to employ, or continue to employ, any individual to such individual or any other party.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I ask unanimous consent that the Intelligence Committee be discharged from further consideration of H.R. 2112, which is the companion measure, and that the Senate proceed to its immediate consideration; that all after the enacting clause be stricken, and that S. 1243, as amended, be inserted in lieu thereof; that the bill be advanced to third reading, passed, and a motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOREN. Mr. President, I move that the Senate insist on its amendments and requests a conference with the House of Representatives on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer [Mr. ROCKEFELLER] appointed Mr. BOREN, Mr. COHEN, Mr. BENTSEN, Mr. NUUN, Mr. HOLLINGS, Mr. BRADLEY, Mr. CRANSTON, Mr. DECONCINI, Mr. METZENBAUM, Mr. ROTH, Mr. HATCH, Mr. MURKOWSKI, Mr. SPECTER, Mr. HECHT, Mr. WARNER, and, for mat-

ters within the jurisdiction of the Committee on Armed Services, Mr. EXON, and Mr. THURMOND conferees on the part of the Senate.

Mr. BOREN. Mr. President, I ask unanimous consent that S. 1243 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOREN. Mr. President, I thank my colleagues and all who have labored so hard on this piece of legislation. I think it is moving us in the direction of a more effective intelligence capability for this country, and I appreciate the hard work of all those involved.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there now be a period for morning business, that Senators be permitted to speak therein for not to exceed 5 minutes each, and that the period for morning business not extend beyond 15 minutes.

Mr. HUMPHREY. Mr. President, reserving the right to object, I want to speak for 20 minutes at the most.

Mr. BYRD. Very well. I ask that the time not extend beyond 9 p.m. and that Senators may speak therein up to 10 minutes each.

The PRESIDING OFFICER. Is there objection?

Mr. HUMPHREY. Reserving the right to object, the Senator from New Hampshire would desire to speak for 20 minutes.

Mr. BYRD. If the Senator will yield, I am trying to help him get his 20 minutes.

Mr. HUMPHREY. I beg the Senator's pardon.

Mr. BYRD. I put a limitation of 10 minutes, but the Senator only has to ask to speak for an additional 10 minutes under this order. I hope he will not object because otherwise he would not have the 20 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. EXON. Mr. President, reserving the right to object, I might add that those of us who would like to live within the original time constraints suggested by the majority leader ask that we might be recognized for the purpose of introducing a bill and then allow the Senator to work his will in whatever timeframe he wants thereafter. But I would not object. I simply ask consideration for those of us who want to use a limited amount of the Senate's time for the purpose of introducing a bill.

The PRESIDING OFFICER. Is there objection? Without objection, the request is granted.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I will take a very brief period of time for the purpose of introducing a bill.

Mr. President, if I could accommodate all my friends, including my friend from New Hampshire, I would need about 3 minutes for the purpose of introducing a bill. Then I will be glad to yield him the remainder of the 10 minutes that I would otherwise have. That would give him the approximate time that I believe he has stated he needs.

(The remarks of Mr. EXON pertaining to the introduction of legislation appear in today's RECORD under Statements of Introduced Bills and Joint Resolutions.)

Mr. EXON. Mr. President, I reserve the remainder of my time and yield it to my friend from New Hampshire.

Mr. HUMPHREY. Mr. President, I thank the Senator from Nebraska and likewise the majority leader for his helpfulness.

NOMINATION OF ROBERT BORK TO BE SUPREME COURT JUSTICE

Mr. HUMPHREY. Mr. President, the opponents of the nomination of Robert Bork to the Supreme Court seem to have an extraordinarily short span of memory.

Only last year there was much hue and cry in this body concerning certain nominees to the Federal bench. Some said that President Reagan was placing too much stress on ideology and too little on professional excellence in his nominations to the Federal bench. The same cry was heard from the outside lobbying groups which are now orchestrating special interest opposition to Judge Bork.

If only President Reagan would nominate judges of high professional qualifications, they said, then, then the fact that they were conservative would not be used to block their confirmation. This line was most repeatedly stressed during the bitter opposition to the nomination of Judge Daniel Manion to the Seventh Circuit Court of Appeals. But it was a common refrain during the opposition campaigns against other Reagan nominees as well.

Curiously, Mr. President, this refrain is no longer heard from those now arrayed in bitter opposition to the Bork nomination. In fact, they are saying just the opposite thing. Suddenly, qualifications, experience, and general professional excellence have become inconsequential or superfluous. All that seems to matter now to the Bork detractors is whether the nominee can satisfy them that he will vote to their satisfaction on certain litmus test issues and whether he is prepared to ignore the constraints of the plain text of the Constitution.

But it should surprise no one, Mr. President, that these forces now seek to lightly skip over the question of judicial excellence and legal scholarship. The obvious reason is that, in Robert Bork, they are confronted with a gen-